UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	Case No. 2:13-md-02460
NIASPAN ANTITRUST LITIGATION,	U.S. Courthouse 601 Market Street
Debtor.	Philadelphia, PA 19106
	Friday, March 8, 2019 2:58 p.m.

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE JAN E. DUBOIS
UNITED STATES DISTRICT COURT JUDGE

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(Proceedings commence at 2:58 p.m.)

THE COURT: This is Judge DuBois. Good afternoon.

UNIDENTIFIED: Good afternoon, Your Honor.

UNIDENTIFIED: Good afternoon, Your Honor.

THE COURT: We're going to proceed with our regularly-scheduled telephone status conference in the In re Niaspan Antitrust Litigation, MDL Number 2460. As is our practice, the conference is being recorded.

I have your proposed agenda, and we will start with that. And if there are any other matters that you wish to address, I'll hear you after we finish going over what is on your joint proposed agenda.

At the outset, is there anything anyone wishes to call to my attention? Hearing nothing, we will proceed. The first item on the joint proposed agenda is an update on expert discovery. I'll hear from you on that issue.

UNIDENTIFIED: Your Honor --

MR. SENATOR: Your Honor, this is Stewart Senator. This is just an informational item for the Court as per the prior discussions with the Court and order. Plaintiffs' expert, Dr. McGuire, submitted his supplemental report on time on, I believe it was, February 27th, and the depositions had been set by mutual agreement based on schedules of counsel and of the experts for the dates indicated in the joint proposed agenda.

THE COURT: And I gather that the one deposition, the last of the two, May 2nd, 2019, is not going to conflict with any other dates already on the schedule.

MR. SENATOR: Correct, Your Honor.

THE COURT: All right. That's fine. And there are no problems that have been encountered with respect to those expert depositions?

MR. SENATOR: Right.

THE COURT: All right. Then, we'll proceed to the second item on the agenda, the class certification hearing. First, the format for the hearing. And I gather the chief issue is whether expert testimony will be required by me. I went back over the submissions sometime ago on expert witnesses, and I can't tell at this time whether I will need any expert testimony. I rather think the answer might be no. I think expert testimony is needed with complex technology, and the last situation in which that arose was a patent infringement case. The technology was very, very complicated, and expert witness testimony was required.

The only area which I -- in this case, the only area of expert testimony which might fall into that category, requiring testimony, is the -- well, the -- are the experts who will testify on damages. And because there are so many of them, I think for now, unless you would -- well, convince me to the contrary, I'll not order that any experts testify at the --

at least the May -- what are those dates, May 14th and 15th, hearing on the motions for class certification.

Does anyone feel strongly to the contrary?

MR. WEXLER: Yes, Your Honor. This is Ken Wexler on behalf of the end-payors. We feel that expert testimony, given the issues, number one, that are created by the Third Circuit with respect to ascertainability and how this has played out in end-payor class action and given the desire whether they succeed or not -- I don't think so, but the defendant's approach is to make things as complicated as possible.

We feel strongly that our experts can simplify matters for the Court. They are extremely credible. We think their credibility will shine compared to the defendants, and we think their testimony should create a record. Whether it goes up or not, it is very important to us.

THE COURT: Well, the question is whether you can communicate all of that to me and whether the experts are needed. You've got too many experts.

MR. WEXLER: Yes.

THE COURT: And it's too -- it's really -- I was going to say "too difficult," but that's not a correct statement. It's practically impossible to figure out from your expert witness submissions to date which experts might -- underscore might -- be useful at the class certification hearing.

MR. WEXLER: Well, there's really -- I mean, we have three experts that are relevant to this, one being Meredith Rosenthal, who presented a report on impact and damages. The defendants have an expert who came in and said we have no methodology for ascertainability, but we have an expert that gave a methodology, and they came back and said, with Mr. Dietz (phonetic), that he does not, and we have rebuttal on experts that demonstrate the ease with which the data that's maintained in this industry can be accumulated to identify class members.

So it's really -- and we feel to put our best foot forward, we would like our experts there. I can certainly argue these issues before Your Honor, and I'm happy to if that's what Your Honor desires, but I do feel that -- you know, there are -- you might have questions. I'd like my experts there to be able to answer them.

THE COURT: Well, you -- number one --

MR. WEXLER: It's been litigated very --

THE COURT: Go ahead.

MR. WEXLER: I'm sorry. I mean, it's just that the issues raised here have been litigated on a number of occasions in the Third Circuit. We feel that we have prepared and submitted a fulsome record, one that has not been seen before, and I want to be able to demonstrate that. I'd like to do it through witnesses if -- but that's -- you know, beyond that, I

mean, it's -- obviously, it's Your Honor's call.

THE COURT: Well, the -- I'm not debating whether it's important that you be permitted to present your best foot forward, put your best foot forward, with respect to all issues, including ascertainability. I'm just not certain it has to be done in the first instance. My thought would be to go through a hearing without expert testimony, and if I think expert testimony is needed or if you can convince me at the hearing after you presentation that you haven't been able to convey to me what you think needs to be conveyed, then I will certainly consider a request for an adjourned hearing.

We did that in -- I've forgotten what case. But Mr. Saint-Antoine would remember. We needed expert testimony, and I think the expert was not available on the date at which -- on which we scheduled the hearing. And so his -- what we did, we presented that evidence by -- I'm not sure whether it was video deposition, probably was, and I ruled. And in that case, I certified the class. But --

MR. SAINT-ANTOINE: Your Honor, this is Paul Saint-Antoine. You're correct. That would be the first class certification hearing in Blood Reagents. The plaintiff's expert, Dr. Beyer, was not available. We went forward with the hearing without his presence, and then about a month or so later, he was -- he testified via videotaped deposition.

THE COURT: Well --

MR. WEXLER: Your Honor, it's Ken Wexler again. In that regard, I mean, our witnesses will be available, and I would hate to prolong the hearing. If Your Honor wants to go that way, it's obviously your decision. I mean, we can follow up argument with expert testimony if I can convince you that it's necessary if I even think it's necessary, but you set aside two days for arguments. That seems long for argument. I think we can put our evidence in and keep the schedule moving. But again, I'll respect whatever Your Honor decides.

MR. SENATOR: Your Honor, this is Stewart Senator for the AbbVie defendants. We think what Your Honor has laid out is the sensible course of action. You know, we've spoken with counsel to the direct purchaser plaintiffs, and while we both recognize and respect that it's the, you know, ultimately the Court's decision, our -- I believe I'm speaking correctly that neither we nor the direct purchaser plaintiffs on the direct purchaser moment -- motion believe that live testimony is necessary.

Now, Mr. Wexler is discussing, obviously, the end-payor motion, and there, we also agree with the Court, recognizing obviously that it's whatever's most useful to the Court that's the controlling factor. But just to respond a bit specifically to Mr. Wexler's points, he's identified three experts. One is Professor Rosenthal, whose report has been put in. The others he referred to as rebuttal experts, and I

believe he's talking about Ms. Kraft (phonetic) and Mr. Miller (phonetic). They're the subject of our Daubert motion.

But totally apart from whether the Court grants the motion or not, they have merely put into the record on rebuttal, so having the last word, very short declarations. Ms. Kraft's is ten paragraphs long. Six of those paragraphs are either her background or how her firm deals with confidentiality or restatement of -- or quoting of the class definition in this case, leaving only four paragraphs of any substance whatsoever. And Mr. Miller's declaration is similar.

So this isn't a situation where, one, the Court needs to have that summarized or highlighted or anything of the sort. They're limited to their declarations, and they are fully understandable and comprehensible on their face on a rather quick read.

THE COURT: Well, I think for now --

MR. WEXLER: I disagree, but I don't want to interrupt, and --

MR. SORENSON: Your Honor --

MR. WEXLER: -- (indiscernible) for argument unless you want to hear it. I'm happy to state our position on that, but if Your --

MR. SORENSON: Your --

MR. WEXLER: -- otherwise, we'll keep going. Go ahead.

MR. SORENSON: Your Honor --

THE COURT: Someone else --

MR. SORENSON: -- this is David -- I'm sorry. This is David Sorenson from --

THE COURT: Yes, go ahead, Mr. Sorenson.

MR. SORENSON: This is David Sorenson for the directs. I just -- could I be heard very briefly?

THE COURT: Absolutely.

MR. SORENSON: I did speak with counsel, Stewart Senator, about the hearing, and although we are inclined to agree that we don't think in-person testimony is needed for the direct hearing, I also agree with at least what I understand to be the Court's statement earlier that it may develop at the hearing that you will find it helpful to then take, you know, for lack of a better way of putting it, followup testimony. It may be that during the course of that hearing, that develops, and so I want to be clear that like the indirects, we want to make sure that our best -- we can put our best foot forward.

So, you know, once the briefing is finished, then it's not yet finished, and then we had the hearing with lawyers, we -- I'm not saying this will happen, but you know, it may develop that we think that it would be helpful to follow up with testimony. And I just wanted to clarify that.

THE COURT: Well, and I think what I'm going to -- well, first of all, I've decided for now, I'm not going to

change the guidelines that I set for the class certification hearing. We'll proceed without expert testimony.

I agree with you, Mr. Sorenson, that I might be in a better position -- maybe a different position, but a better position -- because I will know more at the end of the briefing relating to the class certification issues, and that will be April 8th on the current schedule. And what I will do, we'll schedule the next telephone conference for a date soon after April 8th, and I'll revisit the issue.

In the meanwhile, I'll read the submissions that Mr. Wexler has referenced, the three submissions, and decide whether they're necessary. And if I think --

MR. WEXLER: And I suggest --

THE COURT: Yes?

MR. WEXLER: I'm sorry.

THE COURT: Go ahead, Mister --

MR. WEXLER: It's hard when I can't see you. I don't mean to interrupt you. There's a -- there is a fourth declaration on the issue of ascertainability, and that's mine. So (indiscernible) --

THE COURT: I'm sorry, that's your --

MR. WEXLER: -- the papers.

THE COURT: -- your submission?

MR. WEXLER: It's mine.

THE COURT: Well, you'll be --

MR. WEXLER: Yes, because I put forth our methodology for ascertaining class members.

THE COURT: A different methodology than that submitted by your experts?

MR. WEXLER: No, no, no. The methodology we put forth describes how we will obtain the data, who will process the data, and who can identify class members, which is the test under Carrera, Byrd, every case that has interpreted ascertainability. I set forth the end-payors' methodology.

THE COURT: Well, doesn't that run counter to your argument that your experts are necessary?

MR. WEXLER: Only because the defense playbook is to create complication and confusion. I don't think it's complicated or confusing, and you can view my declaration and you'll see that, but the experts are, you know -- just from past experience, you might have questions about how things are done and how easy it is or how difficult it is.

THE COURT: Well, knowing --

MR. WEXLER: And for that, I would like to have a fulsome record. But I'm perfectly willing to go the route that Your Honor has suggested, which is if it's necessary, that's one thing, and right now, you don't think it is.

THE COURT: No.

MR. WEXLER: I don't think it is either. I think we have enough. But I thought, for purposes of the hearing and

understanding that there was just a two-day evidentiary hearing in the Wolester (phonetic) case on these issues, that it would be -- I want to make sure that our record is full. I think it is and it will be, and it's belt and suspenders.

THE COURT: Well --

MR. WEXLER: If Your Honor then concludes that it would be helpful, then we're prepared to present our witnesses.

THE COURT: Fine. And that's the way we'll proceed. And I'm telling you to -- in -- not in an effort to raise your comfort level, but I'm going to say something that will raise your comfort level. I've already said it. We're going to schedule the next telephone status conference for a short time after the briefing on the class certification issues is complete. That date is April 8th. We'll schedule the next conference shortly thereafter. In the interval, I'm going to read the now four declarations relating to this issue, and I'll tell you whether I think we need more.

MR. WEXLER: Okay.

THE COURT: But we're not trying -- you see, this is not a trial. We're not going to have mini trials on these issues, and because you deluged me with expert reports, I think we're up to 32, 32 experts you thought were essential to the case, you've lost a little credibility on, quote, "what is and what is not an essential expert," end of quote.

All right. That's the way we'll proceed on the

formatting of the class certification hearing.

MR. WEXLER: Thanks, Your Honor.

THE COURT: I have an open mind, and we'll certainly address it at the next conference.

MR. SORENSON: Your Honor, before we leave -- this is David Sorenson. Before we leave class, just one item. It's no need for a decision immediately, but in terms of the two days, the 14th and the 15th, my suggestion -- and I don't know what you -- what the Court already had in mind was that the directs go first on the 14th and then followed by the indirects on the 15th. I don't know whether you had an order in mind or not, but, you know, whenever you think convenient, if you wanted to -- if you could tell us, just for planning purposes, what order you'd like to take these in.

THE COURT: Well, I think --

MR. SENATOR: Your Honor --

THE COURT: Yes, Mr. Senator?

MR. SENATOR: I'm sorry.

THE COURT: Mr. Senator, go ahead.

MR. SENATOR: Yeah, this is Stewart Senator. I fully agree we should set a schedule whenever the Court is ready. I do think it will -- we should wait until April because if there is going to be live testimony, we may have witness availability issues as between the two days. That just frankly, for us, would mean that we'd, on one witness -- Professor Dietz, whose

son is getting married later in the week, can only be available on Tuesday, the first day of the Court's schedule. So if we were to go that route -- and I understand the Court is not inclined to go that route, but if we were to go the route of live testimony on the EPP, the end-payor plaintiffs', motion, then I was going to request that the end-payor one actually start the two days because of that witness issue.

THE COURT: Well, the only reason I ordinarily would go the other way is because the end-payor plaintiffs' issues are more complex. They've had more trouble with the courts than the direct payors. And so I -- and I'm just now sure how I'll go on that, but however I decide that issue, if your expert is not available and you need him and I'm convinced you need him, then we'll reschedule. You've heard me say things like that over and over again.

I really wanted to get this case tried this summer, but on your proposed schedules, even the tighter schedule -- and the tighter schedule can be tightened up a bit. But even on that schedule, it would be difficult. And I think on that tight schedule, for example, oral argument on the motions for summary judgment is scheduled for mid-August. That's -- I can tell you does not work for us. The law clerk who is working on the case now will be leaving, I think, the third week in August, and so that's a no-brainer. That's not going to happen. I'm not going to have one law clerk participate in the

oral argument and have another law clerk pick it up cold.

The goal to be desired seems to be a fleeting one now, and that was to complete everything in sufficient time to try the case in the summer -- this summer, 2019. Doesn't seem like we'll be able to go there. But we'll take a look at that. That's really the next item on the agenda.

Is there anything else that needs to be addressed with respect to class certification? I want to leave you with the thought that on that issue and whether we have testimony or the order of the presentation, I'm flexible. I have a preference for proceeding with the direct -- directs, I'll start shortening that, as opposed to the indirects -- the directs first because I think their issues will be less complicated and we'll have more time for the indirects. Okay.

MR. WEXLER: You know, Your Honor -- it's Ken Wexler. I think ours are not as complicated as you think, but we're used to having the directs go first. And on that basis, it's okay.

THE COURT: Well, I think yours are more complicated. You've got more issues. You've got a wide variety of law. You've got dilemmas for --

MR. WEXLER: Yes.

THE COURT: -- dilemmas for the trial judge because --

MR. WEXLER: Yeah.

THE COURT: -- to say they're not difficult issues.

MR. WEXLER: Understood.

THE COURT: To say they're not difficult issues, I think --

MR. WEXLER: No, it's been very difficult. There's no denying it. But I feel that at this point, we've given you the best record that will ever be given, so --

THE COURT: Well, we'll see whether you're right, but I'm not --

MR. WEXLER: Right.

THE COURT: -- I'm not prepared to comment on that now.

I have your proposed schedules. The next item on the agenda is scheduling further proceedings, and the key is when we proceed with the filing of dispositive motions. And I think what I'm going to do is wait on that until I get the final briefing on the class certification motions and the related Daubert motions. Fortunately, you've cut replies to the last round of Daubert motions. So that date is April 8th, and we'll address the schedule at that time. But I have some questions about your proposals.

First, plaintiffs. I think I was the one who suggested that we consider the filing of dispositive motions before I ruled on class certification, and so I'm certainly not critical of that. I don't know whether it will work, but we'll

see. The plaintiff, in its -- in their proposed schedule, plaintiffs want, I think it's six weeks, roughly six weeks, to respond to dispositive motions and then another three-plus weeks to file replies. Why is that much time needed?

MR. SORENSON: Your Honor, this is David Sorenson. You know, our anticipation is that we -- although we may be filing our own affirmative motion, typically what has happened is the defendants, whether they have -- whether I'd argue they have grounds or not, they filed dispositive motions in these cases. And frankly, you know, it's the whole case, obviously. They're seeking dismissal of the entire case or large chunks of it. The briefs and the associated exhibits and the associated statements of facts sometimes run, you know, to the multi-hundred paragraphs of facts and exhibits. The briefing is often lengthy and truly just a -- you know, based on experience and having gone through this now a number of times, six weeks to respond to that kind of motion is about what we've taken, in some cases, longer than that. We are conscious of trying to move this case along, which is why we suggested the beginning of the briefing made sense, and we just thought that, you know, in light of the stakes in the dispositive motion and what -- on the ground, what it needs, hundreds of paragraphs of asserted facts accompanied by often running into over 100 exhibits. We're talking about that kind of briefing. It's really just trying to be practical, you know, to respond to

that. That's our view.

THE COURT: Well -- and you've explained it. My overarching view is that in cases like this, the parties overcomplicate the issues and submit very, very lengthy briefs. The briefing on class certification -- and it's not an easy decision, but the briefing, in one case, it was more than 100 pages. If it takes 100 pages to say something, that means something is wrong. You've got to do a better job than that. And apparently , lawyers are of the view that the more you submit to the Court, the better the changes of prevailing turn out to be. I don't think that's so. I really don't. It's much harder to write a good, short brief than a good, long brief. And that's what I --

MR. SORENSON: Your Honor?

THE COURT: Yes?

MR. SORENSON: Yeah. Your Honor, I completely agree with all of what you just said. I am more sort of just talking out of experience that we can't control -- again, I'm talking about what we anticipate receiving from the defendants. Whether we think it's advisable for them to, you know, hit us with, you know, a very voluminous filing or not, we have then a responsibility to respond to it. And for every paragraph of an asserted fact they put in, unless we're going to move to strike it, you could -- you know, if Your Honor will grant that, we have to -- you know, we have to respond to it. We're

obligated. And --

THE COURT: Well, the question is how you respond. And just remember, there are maybe 30 of you and there are two of us, and that makes it a little uneven. And what that does is slows down the proceedings. All of this really is related to my interest in trying the case. And I'm just sharing these views with you. I have a suspicion that they're not going to become the rule by which the case is -- proceeds, but I really think less is more. And so far in this case, except for the limitation of trial briefs in page to 20 pages, I don't think we've done that.

The other question I have for you, Mr. Sorenson, is you've gone through all the briefing on summary judgment, and you've provided for private mediation afterwards. Is it contemplated -- do you contemplate that there will be a decision on the dispositive motions before the mediation?

MR. SORENSON: No, not necessarily, more that we just don't think it will be productive until after the briefing is finished so that, basically, everyone's cards are on the table on these motions. In terms of the mediation occurring before or after the decision, in fact, it probably makes more sense to have the mediation before the decision, where everyone is in a maximum state of uncertainty, frankly, than afterwards. You know, obviously, if the mediation doesn't work, that -- you know, that is what it is and we'll go forward. But no, to

answer your question, I think that the mediation, to be most productive, would occur at a time when the motions have been fully briefed, arguments have occurred, but no decision has been yet rendered.

THE COURT: And you think that --

MR. SORENSON: So --

THE COURT: -- will give the parties an opportunity to explore the -- their strengths and their opponents' weaknesses and hopefully focus on a settlement based on the real chances of recovering or winning -- recovering as a plaintiff or winning as a defendant?

MR. SORENSON: Yes, Your Honor. That's in our view.

THE COURT: Okay. The only -- and I'm looking at ways to cut the schedule. It seems to me you don't need two months, which you've allowed, to digest the submissions on summary judgment, and I might cut there. But I -- that's an interesting concept. And I guess in a case like this, it makes senses. In many cases, it does not, but in this case, it does.

I'm not going to go over the other issues presented by your proposal -- I'll turn to the defendants in just a minute -- except to say that the August 8th submission of a trial plan before the hearing on dispositive motions does not seem to work. In my judgment, I think that should be done later. Not too much later, but later.

All right. Now, I'm going to turn to the defendants'

proposed schedule. And really, it's not controversial. You want more time to submit summary judgment and the remainder of the Daubert motions.

MS. ALLON: Your Honor, this is Ms. Allon for TEVA. You know, we did take to heart Your Honor's comments at the last conference that you have a desire to see the case move forward. As I'm sure you recall at the last conference, we did take the position that there should be no briefing on summary judgment until a decision on class certification, but we took your guidance and we instead proposed a schedule teed off of the hearing. So this way, even while the Court is working on its decision, we're moving the case forward and working on the summary judgment briefing so there's no lag time. But we do feel that given the complexity of the issues, given the huge amount that's at stake here, we do need time to fully prepare for summary judgment, and we don't think it would be fair for us to have to be working on summary judgment while also preparing for the class certification hearing.

THE COURT: Well, but forgetting that your schedule doesn't do that, so you're not being subjected to an unfair procedure. But under your schedule, briefing on summary judgment is not completed until mid-October. My goal -- I'm not rushing this case to trial. I want you to have all the time you reasonably need. My goal was to try the case this summer, and under your schedule -- I've heard everything you've

said, but your schedule does not accomplish that at all. It --

MS. ALLON: It does not, Your Honor. I will tell you just for reference, so we have proposed a ten-, eight-, four-week briefing schedule. That is in line with the schedule that we all did for class certification. So class certification briefs were due eight-and-a-half weeks after expert reports. There were nine-and-a-half weeks for replies for oppositions in the class cert, and then four weeks for replies. And again, just to reiterate, you know, in our view, summary judgment and Daubert is more complex. I completely agree with Your Honor that shorter briefs are better. I would suggest it takes more time to write a shorter brief than a longer brief. So I would have no problem with page limits, we -- but we need that time to be able to distill our argument to the clearest and simplest form to be able to accomplish that. And given the range of issues that are left to be narrowed before trial, the number of experts potentially submit to Daubert, and again, the billions and billions of dollars at stake, this is the time that we feel we need to adequately defend our interests.

THE COURT: Well, I'm going to give you that time, and I'm going to pick up on something that you said. I'm not certain your colleagues would be appreciative. And that is page limits. That would make our job a little easier and would eliminate the unfairness involved in the 20 or 30 of you

submitting things that require a decision by us with only two of us available to respond.

We've got a lot of different documents. Have you given any thought to page limits?

MS. ALLON: Your Honor, I have not talked to our co-defendants, but for TEVA, we would be fine with page limits. We would suggest -- you know, typically, there are multiple issues for summary judgment. I anticipate -- you know, plaintiffs can speak for themselves, but in my experience, the plaintiffs also tend to move on at least several issues affirmatively on summary judgment, so we could agree either just to an omnibus total page limit or we could agree to a, you know, kind of per-issue page limit and per-Daubert page limit. Either of those would be fine with us.

THE COURT: Well, I'm not going to rule on that today. I'm not -- I've never limited pages to issues. I've never linked the two. It reminds me of some of my colleagues who use an hourglass to make sure that the witness isn't testifying beyond the allocated time or to make sure that one side doesn't have more time than the other. I don't do that.

But I think what we'll do is have you submit to me a proposal for the next conference on page limits for everything that has to be submitted, and that will be obviously after the April 8th -- I think that's the date -- yeah, it's the April 8th opposition to plaintiffs' Daubert motions relating to

class certification. You should be mindful of what I said in those submissions, but we're not going to change the rules relating to those submissions. We will adopt different rules to try to address the issue regarding summary judgment practice. So that's on the agenda for the next telephone conference.

Let me see if defense raised anything else. I gather the defense -- and I want to hear to the contrary if there is a contrary view. I gather the defense agrees with the plaintiffs that going back to mediation or settlement discussions -- or other settlement discussions before a ruling on summary judgment is appropriate.

MS. ALLON: We do, Your Honor. I think we disagree as to whether there should be a prescribed format, which is why our schedule suggests a settlement report, but the idea was that obviously before the date of that report, the parties would have seriously engaged in those discussions through one format or another.

THE COURT: Does the defense agree that exposure to the briefs on summary judgment, the arguments of counsel on summary judgment, goes a long way toward facilitating the settlement?

MS. ALLON: I agree it goes a way towards facilitating settlement. I'm not sure I would say a long way, but it certainly sharpens the issues and let's the parties see

what's on the table.

THE COURT: Okay. Well, I've heard your views on that. Before I leave the defense settlement report, is there any reason why you referred to me on the signature line as Jan E. DuBois, Jr.?

MS. ALLON: Your Honor, not to shift any blame, but the plaintiff made this submission.

THE COURT: No, no.

MR. SORENSON: Your Honor, I have no knowledge about how that happened.

THE COURT: No, no.

MR. SORENSON: We apologize, Your Honor.

THE COURT: I'm looking -- but I'm looking at defendant's proposed eighth amended --

MS. ALLON: Yeah, but it's at the bottom of the plaintiffs' one, too.

THE COURT: It is? Yes, it is. Well, I'm not a junior. I wish I were. I wish I were and could shave off a few years.

That's all I have on the schedule. I think it's been -- our discussion has been very informative, and I direct that you proceed in accordance with the discussion. So we have at least two significant items for the next telephone conference: the last one, page limits for the summary judgment submission, and the first one, the structure of the hearing on the motion

for class certification.

There's nothing else on your proposed schedule, so -- but before we leave the scheduling of further proceedings, does anyone have anything to add? Hearing nothing, is there anything else you wish to address during this conference, except for the scheduling of the next conference? Hearing nothing, we'll go to the scheduling of the next conference. I said shortly after April 8th.

(Court and clerk confer)

THE COURT: I'm just advised -- and this puts in context what it is district judges do, I have a trial starting on April 8th. It is a case brought by State Farm Insurance Company. It arises out of a fire. The damages are about $350,000, and they won't -- well, they say they won't, but whatever, they can't settle it, and it promises to be controversial. Having said that --

MS. ALLON: Your Honor, I think even Mr. Sorenson and I would agree that State Farm should mediate.

THE COURT: Boy, I do, too. I had the State Farm rep here. I'm just a little frustrated. I like to get those cases settled. I like to get a case like this settled, but working through this is both challenging and interesting. It's really great. Working through a State Farm fire case, not so challenging or interesting or great. But that's on for April 8th. I don't want to put this off too far, and I'll

probably kick myself for scheduling this tight, but let's do it Friday, April 12th.

Now, last --

MR. SORENSON: Your Honor, this is David Sorenson. If it's going to be April 12th, just due to my own conflicts, could it be later in the day, four o'clock, or in the morning? Either one.

THE COURT: Later in the day presents a problem for someone because of the Shabbos. Am I --

MR. SENATOR: This is Stewart Senator. As the West Coast contingent, I'm fully willing to get up early for that because I actually have a conflict later in the day, as well, and I know I'm usually the -- one of the reasons for scheduling it a little later in the day, but that's not applicable on April 12th. Just the opposite is applicable.

THE COURT: Well, you have every reason to have scheduling conflicts, but you've been rather good about them. We haven't had any problems with scheduling early. Maybe it's because we picked later in the day, and I picked later in the day just in case I have a case on trial. I didn't want to keep the jury sitting in the box -- or sitting in the jury room. I don't like that.

How early could you do that -- could you do it, Mr. Sorenson?

MR. SORENSON: Well, I'm on the East Coast, so, you

know, ten o'clock is fine with me. 11 is pushing it, but I could do 11. I'd prefer something like ten o'clock. That makes it a bit early for Mr. Senator, and so I'll sort of defer to him.

MR. SENATOR: It's no problem at all.

THE COURT: I think ten o'clock works better for me in that event -- in the event State Farm is not over, I'll tell the jury to come in later. A trial judge doesn't want the jury sitting in the jury room while he's doing other things, and so we'll schedule it for ten o'clock on Friday, April 12th.

Who will --

MR. SORENSON: Thank you, Your Honor.

THE COURT: We can't burden Mr. Senator. He'll be --

MR. SENATOR: Your Honor --

THE COURT: He might be more pliable. Senator might be more pliable that early in the day.

MR. SENATOR: Actually, I'm up early most days and do my best work then.

THE COURT: Okay. So be it.

Who will initiate?

MR. SORENSON: Your Honor, this is David Sorenson. We can.

THE COURT: All right. Good.

Is there anything else we have to address? Anyone want to say anything? Hearing nothing, this has been a very

fruitful conference, a very good conference. It's even been enjoyable. And on that note, we'll end the conference. Thank you all very much. Have a great weekend.

MR. SENATOR: Thank you, Your Honor.

MS. ALLON: Thank you, Your Honor.

UNIDENTIFIED: Thank you, Your Honor.

THE COURT: Bye now.

(Proceedings concluded at 3:45 p.m.)

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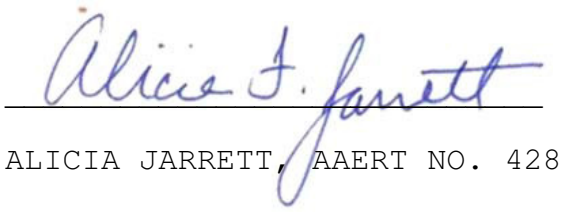
C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ALICIA JARRETT, AAERT NO. 428 DATE: March 18, 2019

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